



HOUSE MAJORITY OFFICE

Representative Adam Hasner, Majority Leader

MAJORITY MEMO

Attorney's Fees In Workers' Compensation Cases
House Bill 903 by Representative Flores
Senate Bill 2072 by Senator Richter

- ***Affordable workers' compensation premiums are critical to recharging Florida's economy and creating and maintaining jobs in Florida.***
- ***House Bill 903 simply restates the Legislature's intent that we passed in the 2003 workers' compensation reforms that stabilized rates. We meant what we said when we said it in 2003.***
- ***Failing to pass this restatement of our intent will result in increased workers' compensation costs and will have a negative impact on job creation and economic recovery.***

Our top priority is to get Florida's economy going and House Bill 903 is vital to protecting jobs in Florida. If the Legislature does not act to remedy the Florida Supreme Court's decision in *Murray v. Mariners Health*¹, the system will return to its pre-reform activity with regard to attorney's fees and rates will once again increase to the detriment of Florida's businesses, employers, and workers.

Background

In October 2008, the Florida Supreme Court issued its ruling in *Murray*, which erodes the costs savings and benefits of reform related to limitations on attorney's fees. In 2003, Florida's workers' compensation premiums were among the highest in the country and the system was in crisis. A statutory provision assuring claimants' attorneys a reasonable fee and tempting them with the prospect of a windfall helped fuel the crisis, putting the viability of Florida's small businesses in jeopardy.

In an effort to restore efficiency in the system and protect the state's economy, the Legislature and Governor Jeb Bush reformed the system. The reforms included a limitation on overall attorney compensation through a contingency fee schedule based upon benefits secured. Statutory factors that Judges of Compensation Claims could use to increase or decrease a fee award were removed, and hourly attorney's fees were limited to medical-only cases and capped at \$1,500.

¹ 949 So.2d 1051 (Fla. 2008).

The reforms proved to be an overwhelming success to stabilize rates in Florida and Florida's workers' compensation premiums became some of the most affordable in the country. In fact, after passage of the reforms, Florida's workers' compensation rates were reduced six consecutive times resulting in a cumulative rate decrease of 60.5 percent.²

While the Legislature's intent in 2003 was clear, the Court in *Murray* determined that there was an ambiguity as to whether a claimant's attorney could collect fees in excess of the statutory fee schedule because a provision in a separate subsection of the law allowed for the recovery of a "reasonable" attorney's fee in certain specified cases. In declaring such an ambiguity, the *Murray* Court eradicated the statutory attorney's fees schedule, which significantly impacts Florida's workers' compensation insurance system by forcing costs to rise.

In fact, soon after the Court released its opinion in the *Murray* case, on November 14, 2008, National Council on Compensation Insurance ("NCCI"), which manages and analyzes claims data for workers' compensation in Florida, submitted its first request for rate increase in years. NCCI determined that it will take two years for Florida to realize the full impacts of the *Murray* decision and, within that time, rates will likely need to be increased by 18.6 percent. In an effort to spread the projected rate increase over the two-year period, NCCI asked the Office of Insurance Regulation ("OIR") to approve an immediate 8.9 percent rate increase.³ OIR actuarial analysis determined that a 13.1 percent increase would be necessary over that same two-year period. Similar to NCCI, in an effort to spread the projected rate increase over this two-year period, on January 26, 2009, OIR approved a 6.4 percent increase effective April 1, 2009, which will cost Florida's employers approximately \$172 million of what they anticipated saving from an earlier rate decrease.⁴

While a 6.4 percent rate increase may not appear substantial, this increase is just the beginning. If past behavior is indicative, we know that limits on attorney's fees are necessary to keep costs down and Floridians in their jobs.

When worker's compensation costs rise, the effects are similar to raising taxes on businesses - it is a proportional tax based upon the employers' payroll. However, unlike payroll taxes, the revenues from increased premiums do not come back to the State. Instead, these revenues become a new source of income for attorneys and other service providers. The overall costs to employers will vary depending on such factors as the employer's payroll (per \$100 payroll) and the employer's industry (high risk versus low risk).⁵

If rates continue to increase in the next few years, undoubtedly costs on Florida's businesses will continue to rise. In these tough economic times, additional financial burdens on Florida's businesses will translate into one thing - businesses will be forced to cut back and add to the growing number of unemployed Floridians.⁶ If the *Murray* decision is allowed to stand, over the next five years, we can expect to lose an additional 337,000

² November 14, 2008 Statement by NCCI.

³ *Id.*

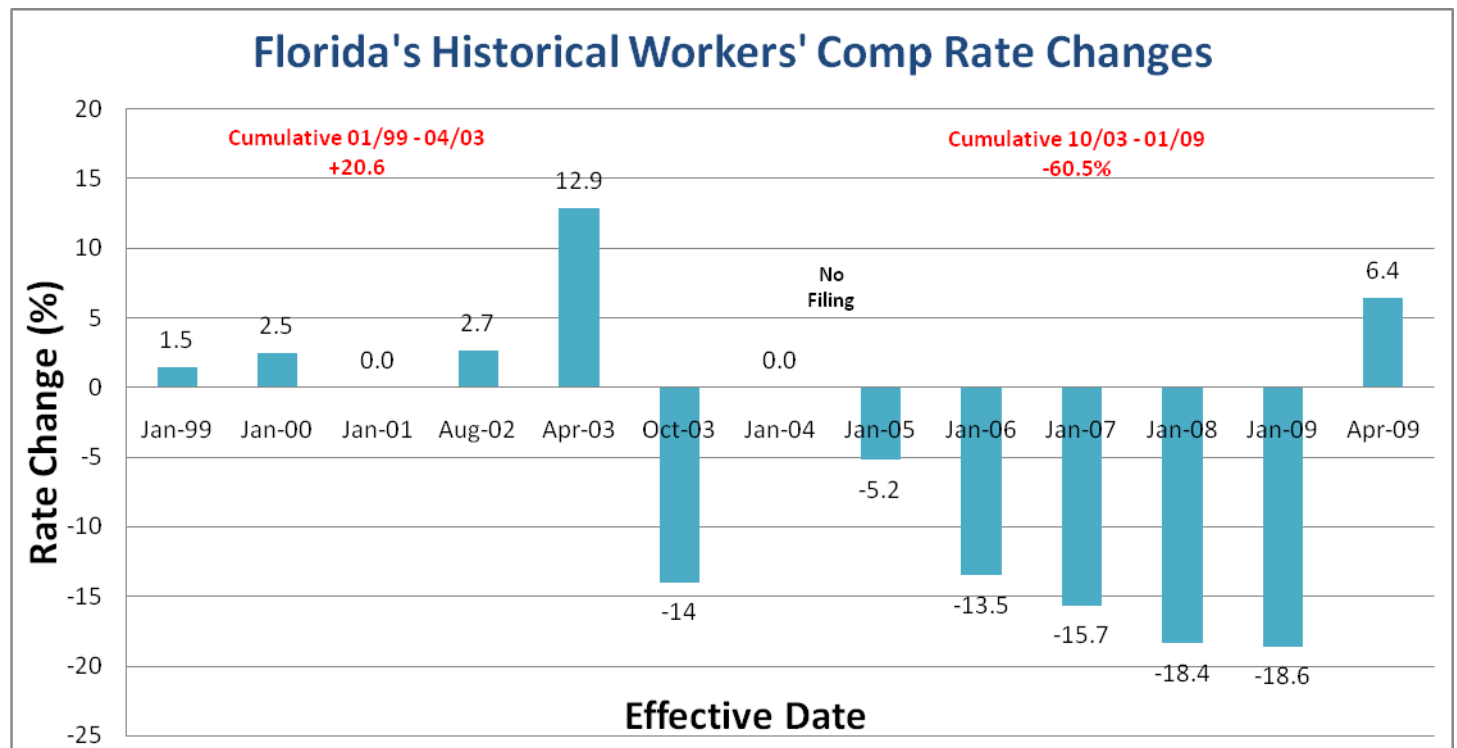
⁴ In a subsequent analysis of the *Murray* decision by economist N. Mike Helvacian, Ph.D. concluded that worker's compensation rates will increase 28.6 percent, which would cause a 0.25 percent cut in Florida's employment growth, 15 percent cut in Florida's wage growth, and result in substantial net loss in terms of jobs and lower wages. N. Mike Helvacian, Ph.D., "The Effects of Murray Decision on Florida's Workers' Compensation Costs, Employment and Wages," March 3, 2009, at 21-22.

⁵ *Id.* at 18.

⁶ Workers in higher-risk occupations and industries will be affected more than other workers. *Id.* at 22.

jobs in Florida and Florida’s workers will see wages reduced \$934 per worker.⁷ We cannot let Florida’s workers suffer by allowing the floodgates of what was once a broken system to reopen.

House Bill 903 helps keep Floridians employed by providing a surgical fix to the reforms the Supreme Court unraveled. While the Legislature’s intent in 2003 was clear, the limited statutory revisions in this bill leave no doubt that, except in certain medical-only cases, attorney’s fee awards in Worker’s Compensation cases are to be made pursuant to the statutory fee schedule created in 2003.



Source National Council on Compensation Insurance, Inc.

⁷ *Id.* at 68.